687.

SUPREME COURT OF THE UNITED STATES.

No. 128.

MARY ANN THOMAS, PLAINTIFF IN ERROR,

vs.

ELIZA LAWSON AND AL., HEIRS AT LAW OF JAMES LAWSON, DECEASED, BY GEORGE A. GALLAGHER, THEIR GUARDIAN *AT* LITEM.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

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GIDEON, print.

THE UNITED STATES OF AMERICA,
Eastern District of Arkansas, sct.

Be it remembered, that at a circuit court of the United States in and for the eastern district of Arkansas, begun and holden at the court-house in the city of Little Rock, on the second Monday of April, A. D. 1851, being the 14th day of said month, the following proceedings were had, the honorable Daniel Ringo, district judge of the United States in and for the eastern and western districts of Arkansas, presiding and holding the term of said circuit court.

THE UNITED STATES OF AMERICA,
District of Akansas, sct.

In the Circuit Court of the said United States for said district.

In Vacation.

Mary Ann Thomas, who is a citizen of the State of Indiana, and plaintiff in this suit, by her attorney, complains of James Lawson, who is a citizen of the State of Arkansas, and defendant herein, of a plea; wherefore he, with force and arms, &c., entered into and upon the following described tract or parcel of land, to wit: the northeast quarter of section numbered twenty-nine, of township numbered one north, in range numbered ten west, containing one hundred and sixty acres, situated in the county of Pulaski in said district, and ejected her therefrom, and still unlawfully withholds the possession thereof from her.

For that whereas the said Mary, heretofore, to wit, on the first day of July, in the year of our Lord one thousand eight hundred and fifty, in the said county and district, was entitled to the possession of the said tract of land and premises, to wit: the said northeast quarter of said section twenty-nine, of said township one north, range numbered ten west, containing one hundred and sixty acres, situated in said county and district, and of great value, to wit, of the value of twenty-five hundred dollars; and the said Mary Ann so being entitled to the possession thereof, the said James afterwards, to wit, on the same day and year last aforesaid, in the county and district aforesaid, with force and arms, &c., entered into and upon the said tract or parcel of land and premises, and ejected her, the said Mary Ann, therefrom, and still unlawfully withholds from her, the said Mary Ann, the possession thereof, and other wrongs to the said Mary Ann then and there did, to her great damage, against the peace and contrary to the form of the statute in such case made and provided: wherefore, she says she is injured and has sustained damage to the value of twenty-five hundred dollars; and therefore she brings her suit, &c.

A. FOWLER, *Atto. for Plaintiff.*

I, Absalom Fowler, acknowledge myself security for all costs for which the plaintiff may be liable in this suit.

A. FOWLER.

Little Rock, Jan'y 15, 1851.

Filed 15th Jan'y, 1851, and writ issued same day.

Attest: WM. FIELD, *Clerk.*

THE UNITED STATES OF AMERICA,
District of Arkansas, sct.

The President of the United States to the marshal of the Arkansas district, greeting:

You are hereby commanded to summon James Lawson, if to be found within your bailiwick, to appear before the judge of our circuit court of the United States for the district of Arkansas, at the court-house in the city of Little Rock, in said district, on the first day of our next April term, to answer Mary Ann Thomas of a plea; wherefore he, the said James Lawson, with force and arms, on the first day of July, A. D. 1850, entered into and upon a certain tract or parcel of land, to wit, the northeast quarter of section numbered twenty-nine, of township numbered one north, in range numbered ten west, containing one hundred and sixty acres, situate in the county of Pulaski, and in said district, and ejected her therefrom, and unlawfully withholds from her the possession thereof; and other wrongs to the said Mary Ann Thomas did, to the great damage of the said Mary Ann, and against the peace of the said United States, to the damage of the said Mary Ann Thomas of twenty-five hundred dollars; fail not but make due return of this writ.

In testimony whereof, Roger B. Taney, esq., Chief Justice of the United States, hath caused the seal of said court to be hereto [L. S.] affixed, this 15th day of January, A. D. 1851, and the 75th year of American independence.

Attest: WM. FIELD, *Clerk.*

UNITED STATES OF AMERICA,
District of Arkansas.

I hereby certify that I executed the within writ by reading the same to the within named Jas. Lawson in his presence and hearing, at the city of Little Rock, and within the district aforesaid, on the 18 day of January, 1851.

LUTHER CHASE, *U. S. M.*,
District Arkansas.

Returned and filed February 3, 1851.

WM. FIELD, *Clerk.*
By R. SEARCY, *D. C.*

On the 14th April, 1851, the following order was had, to wit:

MARY ANN THOMAS, Plaintiff,
vs. } Ejectment.
JAMES LAWSON, Defendant.

This day came the said plaintiff, by attorney, and on his motion it is ordered, that the depositions heretofore filed in this case be opened and published, which is done accordingly.

On the 16th April, 1851, the following order was had, to wit:

MARY ANN THOMAS, Plaintiff,
vs. } In Ejectment.
JAMES LAWSON, Defendant.

And now at this day comes the said defendant, by Watkins & Curran, and on their motion files his first, second, third, fourth, fifth, and sixth pleas in this case.

ARKANSAS, *sct.*

In the U. S. Circuit Court for the eastern division of the district of Arkansas.—To the April term thereof, 1851.

MARY ANN THOMAS
vs. } In Ejectment.
JAMES LAWSON.

1. And said defendant comes and defends the wrong and injury, when, &c., and says actio non, &c., because he says that he is not guilty of unlawfully withholding the premises, in the declaration mentioned, from said plaintiff, as in said declaration is alleged against him, and of this he puts himself upon the country.

2. And for a second and further plea in this behalf, said defendant says actio non, &c., because he says that neither the said plaintiff, nor her ancestor, predecessor, or grantor, was seized or possessed of the premises in question at any time within ten years next before the commencement of this suit, and this said defendant is ready to verify, wherefore he prays judgment, &c.

And for a third and further plea in this behalf said defendant says actio non, &c., because he says that the cause of action, in the declaration mentioned, did not accrue at any time within ten years next before the commencement of this suit, and this he is ready to verify, wherefore he prays judgment, &c.

And for a fourth and further plea in this behalf said defendant says actio non, &c., because he says that he is a purchaser of the lands and tenements mentioned in the declaration, and hold the same under and by virtue of a sale thereof, made for the non-payment of taxes, by the sheriff and collector of the county in which the said lands and tenements were, and are, situate, more than five years next before the commencement of this suit, and this said def't is ready to verify, wherefore he prays judgment, &c.

5. And for a fifth and further plea in this behalf said defendant says actio non, &c., because he says that he is a purchaser of the tract of land in the declaration mentioned at a sale made by the sheriff and collector of the revenue of the county in which said land was, and is, situate, for the non-payment of the taxes assessed and due thereon, and that he has held the peaceable, and adverse, and uninterrupted possession of said land, under and by virtue of his said purchase, for more than five years next before the commencement of this suit, and this said defendant is ready to verify, wherefore he prays judgment, &c.

6. And for a sixth and further plea in this behalf said defendant says actio non, &c., because he says that more than five years before the commencement of this suit the tract of land in the declaration in this behalf mentioned, to wit, on the first day of Nov'r, 1824, was sold by Henry Armstrong, then sheriff of Pulaski county, in the then Territory, now State, of Arkansas, being the county in which the said land then was, and ever since has been, situated, in his capacity of collector of taxes and revenue of the said Territory and county, under and by virtue of the statutes in such case made and provided for the payment of the taxes and costs then due to said Territory and county upon said premises, to the last and highest bidder at public auction, at the court-house door in said county, and then and there purchased by, and struck off and sold to, one Thomas W. Newton, the said taxes being then unpaid and due thereon for the year 1824; and further, that after the said Newton so purchased and obtained a certificate thereof in due form he assigned and transferred the same to this defendant, and after the expiration of one year from the date of said sale the sheriff of said county executed and delivered to said def't, as the assignee of the said Newton, in pursuance of said sale for taxes so made on the first of Nov'r, 1824, and that from the said first day of Nov., 1824, the said defendant and his grantor or assignor, said Newton, have had the uninterrupted and exclusive possession of said land, and more five years had elapsed after the said tax sale before the commencement of this suit, and this said def't is ready to verify, wherefore he prays judgment, &c.

WATKINS & CURRAN.

Filed 16th Ap'l, 1851.
Attest: WM. FIELD, *Clerk*.
By R. SEARCY, *D. C.*

On the 26th April, 1851, the following proceedings were had, to wit:

MARY ANN THOMAS, Plaintiff,
vs.
JAMES LAWSON, Defendant. } Ejectment.

This day came the said plaintiff, by A. Fowler, esq., her attorney, and files her similiter to the first plea, and also her demurrer to the second, fourth, and sixth pleas, and also files her motion to strike out the third and fifth pleas heretofore filed by said defendant in this case.

In the Circuit Court of the United States for the district of Arkansas, held at Little Rock.—In the April term, A. D. 1851.

MARY ANN THOMAS
versus
JAMES LAWSON. } In Ejectment.

And the said Mary Ann Thomas as to the said plea of the said James by him first above pleaded, and whereof he puts himself upon the country, also does the like, &c.

And as to the said pleas of the said defendant by him secondly, fourthly, and sixthly above pleaded, she, the said Mary Ann, says that the same, and each of them, and the matters therein contained, as the same are above pleaded and set forth, are not sufficient in law to bar or preclude her, the said Mary Ann Thomas, from having or maintaining her aforesaid action thereof against the said James, and that she is not bound by the laws of the land to answer the same; and this she, the said Mary Ann, is ready to verify. Wherefore she prays judgment, &c., &c.

And the said Mary Ann, according to the form of the statute in such case made and provided, states and shows to the court here the following causes of demurrer to the said second, fourth, and sixth pleas, that is to say, that said second plea wholly fails to show that said defendant or his grantors has had and held such possession of said tract of land continuously for said period of ten years next before the commencement of this suit, and that such possession was adverse to that of the said plaintiff; and also, that said defendant wholly fails to show by such second plea that he held possession or claimed said tract of land by virtue of any right or title whatever; and also, that said fourth and sixth pleas wholly fail to set forth and show that such alleged sales for taxes, by the several sheriffs and collectors therein mentioned, were in all things regular and valid, and in strict conformity with the statutes then in force, and in such cases made and provided, and that said land was regularly assessed and listed for taxation in the name of the proper owner or otherwise, as directed by law, and for the proper year or years, and that such certificate and assignment thereof, and such deeds of conveyance from the said collectors, were done and made in all things as required by the laws then in force, and in such cases made and provided; and also, that said second, fourth, and sixth pleas are in other respects informal, uncertain, and insufficient, &c.

And said plaintiff, as to the said third and fifth pleas, or the paper writings filed purporting to be such, moves the court that the same may be stricken out and taken from the files as legal nullities, or as improperly setting up the same matter a second time contained in previous pleadings, &c.

A. FOWLER,
Attorney for Mary A. Thomas.

Filed 26th April, 1851.
Attest:

WM. FIELD, *Clerk.*
By R. SEARCY, *D. C.*

On the 2d day of May, 1851, the following proceedings were had, to wit:

MARY ANN THOMAS, Plaintiff,
vs.
JAMES LAWSON, Defendant. } In Ejectment.

This day came the said plaintiff, by A. Fowler, esq., her attorney, and the demurrer to the second, fourth, and sixth pleas, and the motion to strike out the third and fifth pleas, were submitted to the court and taken under advisement.

On the 16th day of June, 1851, the following proceedings were had, to wit:

MARY ANN THOMAS, Pl'ff,
vs.
JAMES LAWSON, Def't. } Ejectment.

This day came the parties by their attorneys; and the court being now fully advised of the demurrer and motion filed in this case by the said plaintiff, doth consider that the said demurrer as to the second, fourth and sixth pleas of said defendant be sustained, and the motion to strike out the third plea of said defendant is also sustained; and it is ordered that the motion to strike out the fifth plea of the said defendant be overruled.

On the 21st day of June, 1851, the following proceedings were had, to wit:

MARY ANN THOMAS, Plaintiff,
vs.
JAMES LAWSON, Defendant. } Ejectment.

This day came the parties aforesaid by their respective attorneys, and the said plaintiff files her demurrer to the fifth plea of the said defendant, which was argued by counsel and submitted to the court; and the court being well and sufficiently advised of the matters of law arising thereon, doth sustain said demurrer. Whereupon, on motion of the said plaintiff, it is ordered that this cause be, and the same is hereby, continued until the next term of this court.

In the Circuit Court of the United States, at Little Rock, Arkansas.—In the April term, A. D. 1851.

MARY ANN THOMAS
versus
JAMES LAWSON. } Ejectment.

And the said plaintiff, by leave of the court first had and obtained, as to the said plea of the said defendant by him fifthly above pleaded, says that the said fifth plea and the matters therein contained are not sufficient in law to bar or preclude the said plaintiff from having or maintaining her aforesaid action thereof against him, and that she is

not bound by the law of the land to answer the same; and this she is ready to verify. Wherefore she prays judgment, &c., &c.

And sets forth and shows to the court here the following grounds of demurrer to said fifth plea, to wit:

1. Because said fifth plea does not state when said alleged tax sale was made, or how, or any facts which show that the said collector had any power to sell the same; or that such alleged sale was in any respect valid, or in compliance with the laws in force when the same was made; or that said defendant ever received any valid deed of conveyance for said tract of land from or under such sheriff and collector; and the allegation in said fifth plea, that said defendant has had five years' possession of said tract of land, under such alleged purchase from the collector, is wholly insufficient in law to bar this action; and that said fifth plea is in other respects wholly informal, uncertain, and insufficient, &c.

A. FOWLER,
Atto. for Plaintiff.

Filed 21st June, 1851.
Attest:
WM. FIELD, *Clerk.*
By R. SEARCY, *D. C.*

On the 23d day of July, 1851, the following proceedings were had, to wit:

MARY ANN THOMAS, Plaintiff,
vs.
JAMES LAWSON, Defendant. } Ejectment.

This day came the said plaintiff, by A. Fowler, esq., her attorney, and on his motion it is ordered that said plaintiff have leave to retake the depositions of John W. Gorrell heretofore taken in this cause.

On the 13th day of April, 1852, the following proceedings were had, to wit:

MARY ANN THOMAS, Plaintiff,
vs.
JAMES LAWSON, Defendant. } In Ejectment.

This day came the parties aforesaid, by their respective attorneys, and on motion of the said plaintiff, and a proper showing to the court, it is ordered that this cause be and the same is hereby continued until the next term of this court.

On the 11th day of April, 1853, the following proceedings were had, to wit:

MARY ANN THOMAS, Plaintiff,
vs.
JAMES LAWSON, Defendant. } Ejectment.

This day came the said plaintiff, by her attorney, and on motion it

is ordered that she have leave to open and publish her depositions in this case.

On the 22d day of April, 1853, the following order was had, to wit:

MARY ANN THOMAS, Pl'ff,
vs.
JAMES LAWSON, Def't. } Ejectment.

This day came the parties, by their attorneys, and by consent it is ordered that this cause be and the same is hereby continued until the next term of this court.

On the 15th April, 1854, the following proceedings were had, to wit:

MARY ANN THOMAS, Plaintiff,
vs.
JAMES LAWSON, Defendant. } Ejectment.

This day came the parties, by their attorneys, and on motion of the plaintiff, and a showing made, it is ordered by the court that this cause be continued until the next term of this court.

In the Circuit Court of the United States for the eastern district of Arkansas—In vacation, March 3, 1855.

MARY ANN THOMAS
versus
JAMES LAWSON. } In Ejectment.

And the said plaintiff, by her attorney, states and shows that since the last term of this court the said James Lawson has departed this life intestate, leaving him surviving the following children and heirs at law, and no others, to wit: Robert E. Lawson, Eliza Lawson, Hiram A. Lawson, Arkansas Lawson, James Lawson, Henry Lawson, and Mary Lawson, all of the said district; and said plaintiff prays that a writ of scire facias may be issued and served on them, to show cause, &c., why they should not be substituted as defendants to this suit, &c.

A. FOWLER,
Atto. for Plaintiff.

Filed 3d March, 1855.

WM. FIELD, *Clerk.*

THE UNITED STATES OF AMERICA,
Eastern District of Arkansas.

The President of the United States to the marshal of the eastern district of Arkansas, greeting:

Whereas heretofore, to wit, on the 15th day of January, A. D. 1851, Mary Ann Thomas, by her attorney, in the circuit court of the United States for the district of Arkansas aforesaid, instituted her suit in ejectment against James Lawson for the recovery of a certain tract of land,

to wit: the northeast quarter of section twenty-nine, in township numbered one north, in range numbered ten west, containing one hundred and sixty acres, situated in the county of Pulaski and district and State aforesaid, which he, the said defendant, James Lawson, withholds from her, to her damage of twenty-five hundred dollars; and whereas, since the institution of said suit, the said defendant, James Lawson, has departed this life, leaving him surviving the following children and heirs at law, and no others, to wit: Robert E. Lawson, Eliza Lawson, Hiram A. Lawson, Arkansas Lawson, James Lawson, Henry Lawson, and Mary Lawson, all of the said district; and the said plaintiff hath applied to our said court for a proper remedy in this behalf, and that said children and heirs of the said James Lawson, deceased, be substituted as defendants in said suit:

You are therefore commanded to make known unto the said Robert E. Lawson, Eliza Lawson, Hiram A. Lawson, Arkansas Lawson, James Lawson, Henry Lawson, and Mary Lawson, that they be and appear before our said circuit court at the court-house in the city of Little Rock on the first day of our next April term, to show cause, if any they have or can show, why they shall not be substituted as defendants in said cause; and the said suit be proceeded in against them as such defendants according to the form thereof, as it may seem meet, and show how you have executed this writ, and have you then there this writ.

In testimony whereof, Roger B. Taney, Chief Justice of the United States, hath caused the seal of said circuit court to be hereto [L. S.] affixed this 3d day of March, A. D. 1855, and the 79th year of American independence.

Attest: WM. FIELD, *Clerk.*

Came to hand the 3d day and executed the 7th day of March, 1855.

JOHN QUINDLEY,
U. S. Marshal.

I executed the within writ on the within named Robert E. Lawson, by delivering a true copy to his mother, a white person over the age of fifteen years, at the family residence in the city of Little Rock, within the eastern district of Ark's, on the 7th day of March, 1855; and at the same time and place on the within named Eliza Lawson, Hiram A. Lawson, Arkansas Lawson, Henry Lawson, Mary Lawson, and on James Lawson, at Tulip, within the eastern district of Arkansas, on the 13th day of March, 1855, by then and there, to each one of them, a true copy thereof.

Given under my hand this 9th day of April, 1855.

JOHN QUINDLEY,
U. S. Marshal for the Eastern District of Arkansas.

Filed 5th April, 1855.

WM. FIELD, *Cl'k.*

On the 9th of April, 1855, the following proceedings were had, to wit:

MARY ANN THOMAS, Plaintiff,
vs.
THE HEIRS AT LAW OF JAMES LAWSON, dec'd, to wit, Robert E. Lawson, Eliza Lawson, Hiram A. Lawson, Arkansas Lawson, James Lawson, Henry Lawson and Mary Lawson, Defendants.
} On scire facias to revive Ejectment suit.

This day came the said plaintiff, by A. Fowler, esq., her attorney; whereupon, on motion, George A. Gallagher, esq., was appointed by the court as guardian ad litem of Robert E. Lawson, Eliza Lawson, Hiram A. Lawson, Arkansas Lawson, Henry Lawson, Mary Lawson and James Lawson, minor children of James Lawson, dec'd, to defend this suit, and the said George A. Gallagher, esq., filed here in court his acceptance of said guardianship; and, by consent of parties, it is ordered by the court that this suit stand revived against the said Robert E. Lawson, Eliza Lawson, Hiram A. Lawson, Arkansas Lawson, James Lawson, Henry Lawson and Mary Lawson, children and heirs at law of James Lawson, dec'd, and that this suit be continued until the next term of this court.

U. S. Ct. Ct. for the eastern district of Arkansas—April term, A. D. 1855.

MARY ANN THOMAS
vs.
MINOR HEIRS OF JAMES LAWSON.

Come George A. Gallagher, who has been appointed by this court guardian ad litem of Eliza Lawson, Hiram A. Lawson, Arkansas Lawson, Henry Lawson, Mary Lawson, and James Lawson, and Robert Lawson, minor heirs of James Lawson, dec'd, and hereby accepts said appointment.

GEO. A. GALLAGHER.

Filed 9th Ap'l, 1855.

WM. FIELD, *Cl'k.*

On the 14th April, 1856, the following proceedings were had, to wit:

MARY ANN THOMAS, Plaintiff,
vs.
THE HEIRS OF JAMES LAWSON, Defendants.
} Ejectment.

This day came the parties aforesaid, by their attorneys, and, on motion, it is ordered that the plaintiff have leave to open and publish her depositions in this cause, which were accordingly opened and filed. The death of Robert Lawson, one of the defendants in this cause,

was suggested and admitted by counsel, and the pl'ff ordered to proceed against the other defendants.

On the 16th day of April, 1856, the following proceedings were had, to wit:

MARY ANN THOMAS, Plaintiff,
vs.
THE HEIRS OF JAMES LAWSON, dec'd, Defendant. } Ejectment.

This day came the parties aforesaid, by their attorneys; whereupon a jury came, to wit: Washington Lewis, Charles Lewis, Francis Lewis, Sam'l M. Williams, Thomas Fletcher, Benj. F. Giles, Alden M. Woodruff, John Wassell, Charles L. Jeffries, Alex. D. Jones, Fred. F. Garritt and William F. Pope, who were duly empanelled and sworn to try the issue joined in this case, and a true verdict render according to the evidence; and after hearing evidence as well on part of the plaintiff as of the said defendant, and the trial of the cause not being closed, the same was adjourned over, and the jury permitted to disperse by consent.

On the 17th April, 1856, the following proceedings were had, to wit:

MARY ANN THOMAS, Plaintiff,
vs.
THE HEIRS OF JAMES LAWSON, dec'd, to wit, Eliza Lawson, Hiram A. Lawson, Arkansas Lawson, Henry Lawson, Mary Lawson and James Lawson, Defendants. } Ejectment.

This day came the parties aforesaid, by their respective attorneys; whereupon the jury also came, and the trial of this cause was resumed, and after hearing the evidence as well on the part of the plaintiff as of the defendants in this cause, and the arguments of counsel and the instructions of the court, *and whereupon* the plaintiff, by her attorney, A. Fowler, here in open court waives a judgment for damages; whereupon the jury retired to consult of their verdict, and returned into court the following, to wit: "We, the jury, find for the plaintiff."

It is, therefore, considered by the court that the said plaintiff, Mary Ann Thomas, do have and recover against and from the said defendants, the heirs of James Lawson, dec'd, the possession of said tract of land mentioned in said declaration of said plaintiff, situate, lying, and being in the county of Pulaski and district of Arkansas, and designated on the plats of the United States surveys as the northeast quarter of section numbered twenty-nine, in township numbered one north, in range numbered ten west, containing one hundred and sixty acres, with the appurtenances thereunto belonging, together with all his costs by him about this suit in this behalf expended, and that the defendant be in mercy, &c.

On the 21st day of April, 1856, the following proceedings were had, to wit:

MARY ANN THOMAS, Plaintiff,
vs.
THE HEIRS OF JAMES LAWSON, dec'd, Defendants.

This day came the said defendants, by Geo. A. Gallagher, their attorney, and filed his motion for a new trial in this cause.

In the Ct. Ct. of the United States for the eastern district of Arkansas—
April term, A. D. 1856.

MARY ANN THOMAS
vs.
HEIRS OF JAMES LAWSON.

Came the said defendants by their attorney, and move the court for a new trial herein, upon the following grounds:

1st. The verdict of the jury were contrary to law and the evidence.
2d. The instructions of the court were contrary to law.
3d. That the refusal of the court to give to the jury in behalf of the defendants the first instruction prayed for by them, was contrary to law.
4th. The giving by the court to the jury, in behalf of the plaintiff, the 1st and second instructions asked for by him, and each and every of them, was contrary to law.
5th. The giving by the court to the jury, on the part of the plaintiff, of the 5th, 6th and 7th instruction prayed for by him, and each and every of them, was contrary to law.

Wherefore said defendants move the court here to grant them a new trial herein.

WATKINS & GALLAGHER,
Att'ys for Def'ts.

Filed April 21st, 1856.

WM. FIELD, *Clerk.*
Per WM. H. CAUSIN, *D. C.*

On the 2d day of May, 1856, the following proceedings were had, to wit:

MARY ANN THOMAS, Plaintiff,
vs.
THE HEIRS OF JAMES LAWSON, dec'd, Defendants. } Ejectment.

The court being now sufficiently advised of the motion of the defendant for a new trial in this cause, and filed and submitted to the court, on the 21st day of April last, orders that the same be granted, and a new trial is hereby awarded, and this cause continued until the next term of this court.

On the 22d day of April, 1857, the following proceedings were had, to wit:

MARY ANN THOMAS, Plaintiff,
vs.
ELIZA LAWSON, HIRAM A. LAWSON, Arkansas Lawson, Henry Lawson, Mary Lawson and James Lawson, heirs-at-law of James Lawson, deceased, Defendants. } In Ejectment.

This day came the parties aforesaid, by their respective attorneys, and also came a jury, to wit: Thomas Williams, Dudley Adams, William C. Hainey, John Montieth, Isham W. Wyatt, Samuel Bender, William T. Brown, Marmaduke Osborne, Herald C. Lowe, Josiah Applegate, Jacob Jones, and Cullin G. Cribb, twelve good and lawful men of this district, who were duly empanelled and sworn well and truly to try the issue joined in this cause and a true verdict render according to the evidence; and during the progress of the trial various exceptions were taken to the ruling and opinion and instructions of the court as to the admissibility of evidence adduced by the defendants, and leave was granted said plaintiff until a future day of the present term of this court, to prepare and file a formal bill of exceptions herein: and the jury, after having heard the evidence of both parties and the instructions of the court, retired to consult of their verdict, and, after some time spent in consultation, returned into court the following verdict, to wit: "We, the jury, find for the defendants. Dudley Adams, foreman."

It is therefore ordered, adjudged and considered by the court, that the said plaintiff, Mary Ann Thomas, take nothing by her said action against the said defendants, Eliza Lawson, Hiram A. Lawson, Arkansas Lawson, Henry Lawson, Mary Lawson and James Lawson, the heirs-at-law of James Lawson, deceased, and that they go hence without day, &c., and that said defendants do have and recover of and from the said plaintiff all their costs in and about this suit in this behalf expended, and that they execution therefor.

On the 1st day of May, 1857, the following proceedings were had, to wit:

MARY ANN THOMAS, Plaintiff,
vs.
ELIZA LAWSON, HIRAM A. LAWSON, Arkansas Lawson, Henry Lawson, Mary Lawson and James Lawson, heirs-at-law of James Lawson, deceased, Defendants. } In Ejectment.

This day came the said plaintiff, by her attorney, and presents her bill of exceptions in this cause, in accordance with leave granted her

at the trial of this case to prepare and present the same at a future day of this term; which bill of exceptions is accordingly signed and sealed by the court, and ordered to become and constitute a part of the record of this cause, together with the papers thereto annexed and therein referred to.

And thereupon the plaintiff files her writ of error to the Supreme Court of the United States in this cause, and lodged a copy thereof with the clerk of this court; and also files her assignment of errors, and prays the court that her said writ of error be allowed, and the same is allowed accordingly, and the clerk ordered to send up a transcript of the record in obedience to said writ; and the said Eliza Lawson, Hiram A. Lawson, Arkansas Lawson, Henry Lawson, Mary Lawson and James Lawson, heirs-at-law of James Lawson, deceased, by George A. Gallagher, their guardian ad litem, acknowledge service, in writing, of the citation issued against them in this cause.

And the said plaintiff filed the bond of Absalom Fowler and Joseph Stillwell, in the sum of two hundred dollars, payable to the above named Eliza Lawson, Hiram A. Lawson, Arkansas Lawson, James Lawson, Henry Lawson and Mary Lawson, conditioned to prosecute the said writ of error in this case to the Supreme Court of the United States, which was duly approved by the Hon. Daniel Ringo, district judge of the United States in and for the eastern and western districts of Arkansas.

Bill of Exceptions.

In the Circuit Court of the United States for the eastern district of Arkansas—April term, A. D. 1857.

MARY ANN THOMAS, Plaintiff, versus ELIZA LAWSON, ARKANSAS LAWSON, Hiram A. Lawson, James Lawson, Henry Lawson and Mary Lawson, minors and heirs-at-law of James Lawson, deceased, by George A. Gallagher, esquire, their guardian ad litem, Defendants.	Ejectment revived by scire facias.

Be it remembered, that on the trial of this cause, the plaintiff read in evidence to the jury, without objection, a patent, of which the following is a true copy, to wit:

James Monroe, President of the United States of America, to all to whom these presents shall come, greeting:

Know ye, that in pursuance of the acts of Congress appropriating and granting land to the late army of the United States, passed on and since the sixth day of May, 1812, Mary Ann Crow, daughter, and the other heirs at law of John Crow, deceased, having deposited in the General Land Office a warrant in their favor, numbered 12,566, there is granted unto the said Mary Ann Crow, daughter, and the other heirs

at law of John Crow, deceased, late a private in Chunn's company, third regiment of infantry, a certain tract of land containing one hundred and sixty acres, being the northeast quarter of section twenty-nine, of township one (N.), in range ten (W.), in the tract appropriated (by the acts aforesaid) for military bounties in the Territory of Arkansas:

To have and to hold the said quarter section of land, with the appurtenances thereof, unto the said Mary Ann Crow, daughter, and the other heirs at law of John Crow, deceased, and to their heirs and assigns forever, as tenants in common, and not as joint tenants.

In testimony whereof, I have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, this first day of February, in the year of our Lord one thousand eight hundred and twenty-one, and of the independence of the United States of America the forty-fifth.

[L. S.]

JAMES MONROE.

By the President:

JOSIAH MEIGS,
Commissioner of the General Land Office.

The plaintiff then proved by competent legal evidence that at the time of, and before the commencement of this suit, she was the only surviving child and sole heir at law of the said John Crow, deceased, her original name being Mary Crow; that she was born in the year 1806, and was married in the year 1824 to James Thomas, who died in the spring of the year 1840, and that in and from the year 1839, until the present time, she resided in, and was a citizen of the State of Indiana. And that the original defendant in this suit, James Lawson, the father of the present defendants, who are his only present living children, was in possession of the said tract of land, to wit: the northeast quarter of section numbered twenty-nine, in township one north, range ten west, now in controversy, claiming it as his own under a tax title, and refused to deliver up the possession to said plaintiff, but a few days before the commencement of this suit, which was done on the 15th day of January, 1851, although she had then voluntarily tendered him by her agent all the money that he had ever paid out for said land, with ten per cent. interest thereon from the time of his paying the same out.

The defendants then offered in evidence a paper, partly in writing and partly in print, or rather several pieces of paper fastened together with wafers, two pieces in print and two in writing, so attached together; one of which, in writing, was the certificate of acknowledgment and of record, which was wholly on a separate piece of paper from the rest, so attached with wafers to them; the whole taken together purporting to be a deed of conveyance from a sheriff and collector of the revenue of said county of Pulaski, to said James Lawson, the original defendant to this suit, as will be hereinafter more fully stated, to the reading of which in evidence the said plaintiff, by her attorney, objected, upon the following grounds, to wit:

First. That the paper, or papers, so offered, bore upon their face unmistakable evidence of fraud, and of having been patched up out of fragments of papers of different kinds, some of them of far different dates, and showing upon their face, and especially that purporting to be a certificate of acknowledgment, that it was made about a different transaction entirely.

Secondly. That there was no valid proof of the execution of such paper as a deed.

Thirdly. There was no proof of the authority of the said William B. Borden to execute such deed, or that he was, at the date of its execution or acknowledgment, collector of taxes in and for said county of Pulaski.

Fourthly. It was not accompanied by proof that the said tract of land in controversy was either assessed or taxed, or advertised, or legally sold in the year 1824, for taxes, or that the said Henry Armstrong, as such alleged sheriff, assessor and collector, in the year 1824, had any authority to assess said tract of land for taxation, or to sell it for the non-payment of such taxes.

Fifthly. That such paper, purporting to be such deed, was not admissible in evidence until it should be first proved that all the material steps required by law, preparatory to and in the assessment and taxation of said tract of land, and in the advertisement and sale thereof, in the year 1824, and all previous steps required by law, prior to the execution of such deed, had been complied with, either by record evidence or by evidence in pais.

Sixthly. That said land was not subject to taxation in the said year 1824. But the court overruled the objections of the plaintiff, and permitted said paper writing, purporting to be such deed, to be read in evidence, and the same was read in evidence, without any proof whatever outside of said deed of a compliance with the law, in such assessment, taxation, and sale, or of the authority of said Armstrong to sell, or of said Borden to make such deed; and to which decision and judgment of the court in overruling such objections, and in omitting such paper in evidence, the said plaintiff excepted at the time, and such exception was noted down by the court, and further day given to reduce such exception to form, which is now done accordingly. And which said paper purporting to be such deed, as so read in evidence, is in the words and figures following, to wit:

This deed of the sheriff, ex officio assessor and collector of Pulaski county, in the State of Arkansas, made, signed, sealed and delivered, the second day of November, in the year of our Lord one thousand eight hundred and forty-six, witnesseth: That whereas, in accordance with the laws in force concerning the revenue of the said Territory, the sheriff, ex officio assessor and collector of said county, assessed for taxation, in the name of Robert Kelly, the northwest $\frac{1}{4}$ of section 33, for the year 1824, $2 40; also northwest $\frac{1}{4}$ of section 28, in name of Sam. Brandon, for 1824, $2 40; also northeast $\frac{1}{4}$ of section 29, in the name of John Crow, for 1824, $2 40; southeast $\frac{1}{4}$ of section 29, for 1824,

$2 40, in name of William Wood; also southeast ¼ of section 28, for 1824, $2 40, in name of John Richards; also southeast ¼ section 28, taxed in name of W. Buford for 1824, $2 40; also N. E. ¼ section 33, taxed in name of Thomas Jones, for 1825, $2 40; making in all eleven hundred and twenty acres of land, all lying in township one north, of range ten west of the fifth principal meridian, and situate in the county of Pulaski aforesaid; which assessment thereon amounted to the sum of sixteen dollars ($16 80) eighty cents; and whereas, also, within the time prescribed by law, the sheriff, ex officio assessor and collector as aforesaid, made in due form of law, and filed in the office of the clerk of the county court of said county, a list of lands and town lots owned by and assessed to persons now residents of said county, in which list the aforesaid lands were embraced, and also a copy of said list to be set up at the court-house door of said county, and the same to be published in the Arkansas State Gazette, a newspaper printed in the Territory aforesaid, four weeks successively before the day of sale prescribed by law; and whereas, also, the said sheriff, ex officio assessor and collector as aforesaid, on the first day of November, A. D. 1824, as prescribed by law, at the court-house in said county, did expose and offer for sale at public auction the above described as aforesaid, for the payment of taxes and penalty thereon, amounting to the sum of sixteen dollars eighty cents, and that Thomas W. Newton became the purchaser of said lands, and transferred his certificate to James Lawson, no one having offered to purchase a less quantity for said taxes and penalty thereon as aforesaid; and whereas the said sheriff, ex officio assessor and collector as aforesaid, did make out and deliver to the said purchaser a certificate of purchase containing the requisite description of the taxes and penalty on such lands listed so as aforesaid assessed for taxation, and that the said sum of sixteen dollars was paid by the purchaser, T. W. Newton; and whereas, also, one year having expired from and after said sale, and said Newton, by James Lawson, having presented to William B. Borden, the sheriff, ex officio assessor and collector as aforesaid, the certificate aforesaid, and requested a deed in due form of law:

Now, therefore, in consideration of the premises, the said sheriff, ex officio assessor and collector as aforesaid, doth by these presents grant, transfer, assign and convey unto the said James Lawson, and his heirs and assigns forever, all the right, title, interest, estate and claim of the said individuals above named, or of the owner or owners thereof, and all the right, title, interest and claim of the State of Arkansas in and to the above described lands as above described in township one north, of range ten west of the fifth principal meridian, situate in said county of Pulaski, and State aforesaid, and containing eleven hundred and twenty (1120) acres: to have and to hold the same, together with the appurtenances, unto the said James Lawson, and his heirs and assigns forever.

In testimony whereof, the said sheriff, ex-officio assessor and collec-

tor, of said county of Pulaski, in such character, has hereunto set his hand and affixed his seal, the day and year first above written.

W. B. BORDEN, [SEAL.]
Sh'ff and Collector, Pulaski County.

Test:
JNO. C. PEAY,
D. W. CARROLL.

STATE OF ARKANSAS, *County of Pulaski.*

In the Pulaski Circuit Court, at the June term thereof, A. D. 1849—13th day of July, A. D. 1849.

Wm. B. Borden, late sheriff and collector of Pulaski county, to James Lawson.—Collector's deed.

This day personally appeared in open court, William B. Borden, late sheriff and collector of Pulaski county, and acknowledged that as such sheriff and collector he had, for the consideration and purposes therein mentioned and set forth, executed a certain deed of conveyance, now here to the court shown, in favor of James Lawson, for the following described tracts of land, to wit: the N. W. $\frac{1}{4}$ of sec. 33, the N. W. $\frac{1}{4}$ of sec. 28, the N. E. $\frac{1}{4}$ of sec. 29, the S. E. $\frac{1}{4}$ of sec. 29, the S. W. $\frac{1}{4}$ of sec. 28, the S. E. $\frac{1}{4}$ of sec. 28, the N. E. $\frac{1}{4}$ of sec. 33, in township one north, of range ten west, sold by said Borden as such sheriff and collector, under and by virtue of a levy and distress made upon said tracts of land, to secure the payment of the State and county taxes, penalty, costs, and charges due for the years 1824 and 1825.

STATE OF ARKANSAS, *County of Pulaski, ss.*

I, Gordon N. Peay, clerk of the circuit of said county, do hereby certify that the foregoing acknowledgment is a true copy from the record in the case therein mentioned, as the same remains of record in my office.

In testimony whereof, I do hereunto set my hand and affix the seal [L. S.] of said court, this 13th day of July, A. D. 1849.

GORDON N. PEAY, *Clerk.*

STATE OF ARKANSAS, *County of Pulaski, ss.*

I, Gordon N. Peay, clerk of the circuit court and ex officio recorder for the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office, on the 22d day of January, A. D. 1850, and the same is now duly recorded in Record-book W, page 499 and 500.

In testimony whereof, I have hereunto set my hand and affixed my [L. S.] seal of office at Little Rock, this 27th day of March, A. D. 1850.

GORDON N. PEAY,
Clerk and Ex officio Recorder.

The defendants then proved by competent legal evidence that Thomas W. Newton, by quit-claim deed, dated May 21, 1846, in consideration of one dollar, assigned and transferred to the said James Lawson, now deceased, all his right, title, interest, and claim in and to the lands so alleged to have been purchased by him in 1824, and so embraced in the said so-called deed from said Borden to said Lawson above copied herein.

The defendants then offered to read in evidence a paper writing purporting to be a decree of the circuit court of said county of Pulaski, in chancery, to which the said plaintiff objected, upon the grounds that upon its face it was inoperative and void as a decree, and that even if otherwise valid it did not embrace the tract of land in controversy in this suit; but the court overruled the objection and permitted the same to be read in evidence, and the same was so read in evidence to the jury, and to which decision and judgment of the court permitting the same to be read in evidence the said plaintiff excepted at the time, and such exception was then noted by the court, and further time was given to reduce such exception to form, which is now done, and a true copy of which said paper writing, purporting to be such decree so read in evidence, is in the words and figures following, to wit:

THE STATE OF ARKANSAS,
County of Pulaski, sct.

Be it remembered that at a chancery court begun and held within and for the county and State aforesaid, at the court-house in the city of Little Rock, on the first Monday of December, A. D. 1849, present the honorable William H. Field, judge, among other the following proceedings were had in said court, on the chancery side thereof, on the 20th day of February, A. D. 1850, a day of said term, to wit:

JAMES LAWSON, ex parte.

Petition for Confirmation of Tax-Title.

And now on this day comes the said petitioner, by his solicitors Pike and Cummins, and files his petition herein for confirmation of the sale of certain lands for the non-payment of taxes, in and by which petition it is represented and alleged that in accordance with the law in force concerning the collection of the revenue of the State, then Territory, of Arkansas, Henry Armstrong, then sheriff and ex officio collector and assessor of Pulaski county, under and by virtue of the authority vested in him as such, in pursuance of an act of Congress of the United States, passed 2d day of March, 1819, entitled "An act to establish a territorial government in the southwestern part of Missouri, granting power to the territorial government to levy and collect taxes upon military bounty lands situate in said Territory of Arkansas," did assess the following described tracts or parcels of land lying and being in said county, to wit: the N. W. $\frac{1}{4}$ section 33 in the name of Robert Kelly for the sum of $2 40; the N. W. $\frac{1}{4}$ of section 28 in the name of Sam. Brandon for $2 40; the N. E. $\frac{1}{4}$ section 29 in name of John Crow's heirs for $2 40; the S. E. $\frac{1}{4}$ section 29 in the name of Wm. Wood

for $2 40; the S. W. ¼ section 28 in the name of John Richards for $2 40; the S. E. ¼ section 28 in the name of W. Buford for $2 40; the whole of the above lying in township one north, of range ten west, and each tract containing 160 acres; and twenty days having elapsed, and there being no personal property whereof to make said taxes, the said sheriff and collector made out in due form of law, and had the same advertised in the Arkansas Gazette, a newspaper printed in the city of Little Rock, within the time prescribed by law, and did proceed to sell at the court-house door, in the county of Pulaski, the several tracts of land above specified at public outcry, and Thomas W. Newton became the last and highest bidder for the whole of each tract of land aforesaid, the taxes, penalty, and costs on each of said tracts amounting to the sum of $2 40 each tract. And the said sheriff and collector of Pulaski county did also assess for taxation, for the year 1825, the N. E. ¼ of section 33, township one north, range twelve west, the taxes, penalty, costs and charges on which tract amounted to the sum of $2 40, and no person offering to pay the taxes, and no personal property whereon to levy and make the same, he advertised the said tract of land in the Arkansas Gazette, a newspaper printed in the city of Little Rock, for more than thirty days before the 7th day of November, 1825, the day of sale, and on that day did offer and sell to Thomas W. Newton, he being the highest bidder for cash, the said tract of land for the sum of $2 40, it being the tax, with the penalty and costs due on said tract of land.

And also William B. Borden, the then sheriff of Pulaski county, did assess for taxation for 1845, the following described tracts of land, to wit: the N. E. ¼ section 28, in township one north, of range ten west, in the name of John Crow; the N. W. ¼ of section 28, same township and range, and no person appearing or offering to pay the taxes on said tracts of land, he advertised the same in the Arkansas State Gazette, a newspaper printed in the city of Little Rock and county of Pulaski, in the manner prescribed by law for such sales, and after offering the same before the court-house door in said county, James Lawson became the last and highest bidder for said last named tracts of land *tracts of land*, for the sum of four dollars and fifty cents, the amount of taxes, penalty, costs and charges due on said tract of land. And that the said William B. Borden, as such sheriff and collector, did assess for taxation for the year 1845, the S. W. ¼ of section 21, the S. W. ¼ of section 32, the south W. ¼ section 13, all in township three north, eleven west, in the name of John Morris, and no person offering to pay the taxes on said tracts of land, and the owner having no personal property out of which to make the same, the sheriff and collector did advertise the said tracts of land in the Arkansas State Gazette, a newspaper printed in the said city of Little Rock, in said county of Pulaski, in the manner prescribed by law, to be sold on the 20th day of October, 1845, at the court-house door of said county, and did offer said lands for sale, and James Lawson became the purchaser of said tracts of land for the sum of $8 73, the amount of taxes, penalty, costs and charges

due on said tracts of land; and that the said William B. Borden did assess for taxation for the year 1846, the N. W. ¼ of section 28, in the name of John Brandon, in township 1 north, of range 10 west, and no person offering to pay the taxes, he advertised the same in the Arkansas State Gazette, in the manner prescribed by law, to be sold at the door of the court-house of the county of Pulaski, on the 2d day of November, 1846, and at said time and place he offered said lands for sale at public outcry, and James Lawson being the last and highest bidder, became the purchaser at the sum of $7 80, the taxes, penalty, costs and charges due on said tract of land; that Andre J. Hutt, as sheriff and collector of said county of Pulaski, did assess for taxation in the year 1847, the S. W. ¼ of section 33, in the name of D. Bringer; the N. W. ¼, the N. E. ¼, and the S. W. ¼ of section 33, in the name of C. Wright, all the said tracts of land being in township one north, of range 10 west, and no person offering to pay the taxes on said lands, and there being no personal property of the owners whereof to levy and make the same, he advertised the said lands in the Arkansas State Gazette, a newspaper printed in the city of Little Rock, to be sold on the first Monday of November, 1847, at the door of the court-house of Pulaski county, and at said time and place did offer the same at public outcry, and James Lawson being the last and highest bidder, became the purchaser of said tracts of land for the sum of $18 30, the full amount of the taxes, penalty, costs, and charges due on said tracts of land. That the said tracts of land so sold by the said Henry Armstrong, on the first day of November, 1824, to wit: N. W. ¼, S. E. ¼, and S. E. ¼ of section 28, the N. E. ¼ of S. E. ¼ of section 29, the N. W. ¼ and N. E. ¼ of section 33, all in township one north, of range ten west, was purchased by the said Thomas W. Newton, and a certificate granted to him, which said certificate was assigned to the said James Lawson for a valuable consideration. That after the expiration of twelve months from the date of said certificate, the same, together with the assignment, was presented to William B. Borden, sheriff and collector of said county, and he executed to the said James Lawson a deed, granting to him all the right, title, and interest which the owners, or any of them, or the State of Arkansas have to any part or portion of said lands whatever.

That at the sale made by the said Wm. B. Borden, as sheriff and collector, on the 2d day of Nov., 1846, of the N. E. ¼ and the N. W. ¼ of section 28, and the sale made on the 20th day of October, 1845, of the S. W. ¼ of section 21, the N. E. ¼ of section 32, and the S. W. ¼ of section 13, all in township three north, range eleven west, and the said sale made on the first day of November, A. D. 1847, of the S. W. ¼ of section 33, all in township one north, range ten west, the said James Lawson became the purchaser of said lands, as before recited, and certificates of purchase were delivered to him therefor, and the purchase-money paid by him; and that more than one year having elapsed after such purchase, the said James Lawson presented said certificates to said sheriffs, and they executed deeds to him in the

manner prescribed by law; and said deeds have been duly executed and acknowledged, and recorded in the recorder's office of said county of Pulaski.

That after the time allowed by law for the redemption of said lands, and more than six months before the commencement of the present term of this court, he caused a notice, stating the authority under which said sheriff's sales took place, and also containing the same description of the lands purchased as that given in said sheriff's deed, and declaring the price at which said tracts were respectively bargained, the nature of the title by which the same are held, and calling on all persons who could set up any right to any part of said lands, in consequence of any irregularity or illegality connected with said sales, to show cause at the first term of the circuit court of said county, six months after the publication of said notice, being the present term of this court, why the respective sales so made should not be confirmed, pursuant to a petition to be filed in this court for that purpose, to be inserted and published in the Arkansas State Democrat, a newspaper published in Little Rock, for six weeks in succession, the last insertion to be more than six months before the commencement of the present term of this court, as by affidavit of the publisher, setting forth a copy of such notice, with the date of the first publication thereof, and the number of insertions sworn to and subscribed before a justice of the peace of said county, and properly authenticated and filed with said petition, fully appears to the court.

Whereupon, all and singular the allegations made in said petition being, by the production of said deeds and due proofs of the publication of said notice, proven and established to the satisfaction of the court here, and no cause having been shown against the prayer of said petition by any person whomsoever, but the said application being and remaining wholly undefended—

It is therefore considered and adjudged and decreed by the court here, that said sheriff's sales, and each of them, be, and the same are hereby, in all things confirmed, according to the statute in such case made and provided; and further, that this decree shall operate as a complete bar against any and all persons hereafter claiming said lands or any part thereof, in consequence of any informality or illegality in any of the proceedings aforesaid, and that the title of each of said tracts of land be decreed and considered as hereby confirmed and completed in said James Lawson, and his heirs and assigns forever; saving, however, to infants, persons of unsound mind, imprisoned, beyond the seas or out of the jurisdiction of the United States, the right to appear and contest the title to said lands, within one year after their disabilities may be removed. And it is ordered that the petitioner pay the costs thereof.

THE STATE OF ARKANSAS,
County of Pulaski, ss.

I, Gordon N. Peay, clerk of the chancery of said county, do certify, that the decree on the annexed and foregoing eight pages is a true and

complete copy thereof, taken from the record of proceedings *as* said court as the same appears therein; and I further certify, that I have made dilligent search and examination for the original papers in said cause, and the same cannot be found in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office, this 14th day of April, A. D. 1857.

[L. S.]

GORDON N. PEAY, *Clerk.*

The defendants then proved that the said tract of land mentioned in said declaration was taxed in the name of the said James Lawson, for the years 1846, '7, '8, '9, '50 and '51; but there was no evidence that said Lawson had so caused it to be taxed in his name, except the mere fact that it so appeared on the tax-books, which was all the evidence given to the jury.

The plaintiff then moved the court to give certain instructions to the jury, numbered as below, consecutively, from 1 to 7, inclusive, the first and sixth of which the court gave, and refused to give the said second, third, fourth, fifth and seventh, or either of them, and to which judgment and decision of the court so refusing to give said second, third, fourth, fifth and seventh instructions to the jury, the said plaintiff excepted at the time, and such exception was then noted down by the court, and further time was given the said plaintiff to reduce such exception to form at any time during the same term, which is now done accordingly; and which said seven instructions, so moved by the said plaintiff, and so consecutively numbered from 1 to 7 inclusive, are as follows, to wit:

1. If the jury believe, from the evidence, that the plaintiff, Mary Ann Thomas, was legally entitled to the possession of the northeast quarter of section 29, in township one north, range ten west, described in the declaration on the 15th day of January, 1851, and that the said original defendant, James Lawson, was then in the possession thereof, without her permission, they should find for the plaintiff, unless it appears from the evidence that the said James Lawson then had a better title thereto than the said plaintiff.

2. That the deed read in evidence, purporting to have been executed by William B. Borden, as collector, &c., to James Lawson, is not to be considered by them as evidence for any purpose in this case, except to show that said James Lawson was entitled to protection in this case as claiming under a tax title coupled with a possession of five years.

3. And that, although the jury may for this purpose consider*ed* said deed as evidence, yet unless it appears to them, from other evidence, that the said James Lawson was in the actual possession of the said land for five consecutive years next before the institution of this suit, he is entitled to no protection under said 5 years' act of limitations.

4. That in order to protect the defendants under said five years' act of limitations, it must appear from the evidence, to the satisfaction of the jury, that such possession was actual and adverse to the plaintiff, and that a mere claim of title to the land by said Lawson would not be sufficient for this purpose.

5. That by the law of the land, the decree read in evidence passes no title to the defendant, unless it appears from the face thereof that this particular quarter section of land in controversy was decreed to the said James Lawson, or his title thereto was confirmed by such decree.

6. If the jury believe, from the evidence, that such decree was obtained by the said James Lawson by fraud or circumvention, or upon evidences which were fraudulent or void upon the court which rendered the decree, they may utterly disregard such decree.

7. That the copy of the decree read in evidence to the jury does not confirm title in James Lawson to the tract of land in controversy in this suit, and therefore should not be regarded by the jury as evidence in this cause, but utterly disregarded as evidence.

The court then charged the jury, that the said decree read in evidence to them on the part of the defendants divested the title of the plaintiff in the said tract of land described in the declaration; and that since the rendition of the said decree she has no title to the said tract of land, unless she has, since the date of such decree, obtained title thereto from or under the said James Lawson, the petitioner in that decree, or unless such decree were obtained by fraud. And that if the jury believe, from the evidence, that the said deed read in evidence, on the part of the defendants, from the said Borden to the said Lawson, was recorded five years before the commencement of this suit, or if the said Lawson, or his heirs the said defendants, had had possession of the land in controversy five years before the commencement of this suit, then in either case the five years' statute of limitations would apply to the case, and they should find for the defendants.

To the giving of each of which last two instructions the said plaintiff excepted at the time, and such exception was then noted by the court, and further time was given to reduce such exceptions to form, on any day during the same term, which is now done accordingly.

The defendants then moved the court to give certain instructions to the jury, numbered from 1 to 4, consecutively, and true copies of which are as follows, to wit:

1st. That the decree of confirmation of tax title in evidence in this cause is conclusive evidence that the prior title of the plaintiff was entirely divested at the date of said decree by the rendering thereof; that the plaintiff must recover on the strength of her own title; and if she has none, she cannot recover, though the defendants show none; and that none is shown by the plaintiff, unless she shows such title vested in her subsequent to said decree.

2d. That if the jury believe, from the evidence, that the vendor, Thos. W. Newton, under whom def'ts claim, purchased said land at a sale of the same for taxes, and that more than five years elapsed subsequent to the sale thereof, and the institution of this suit, they must find for def'ts.

3d instruction. That if the jury believe, from the evidence, that the vendor, Thos. W. Newton, under whom def'ts claim, purchased the land in controversy from the sheriff and ex officio collector of taxes

on the 7th day of November, A. D. 1824, of the then Territory of Arkansas, at a sale made of the same by said collector for taxes due thereon, and that said Thomas W. Newton conveyed all his interest in and to the same to the original defendant, James Lawson, father of these defendants, and that on the 2d day of November, A. D. 1846, the then sheriff and ex officio collector of Pulaski county, in the then State of Arkansas, made, executed, and delivered to the said James Lawson, former defendant and father of these defendants, a deed to the said tract of land in controversy, and that more than five years have elapsed since said deed was executed, the 14th Jan'y, A. D. 1843, and previous to the institution of this suit, they must find for def'ts.

4th instruction. Same as above down to due thereon, and afterwards, and that the jury believe, from the evidence, that *that* since the sale for taxes aforesaid, and the 14th of January, A. D. 1813, and previous to the institution of this suit, the full term of five years have elapsed, they must find for the defendants.

Which said several four instructions so moved by the defendants, and each of them, the court refused to give as asked, but gave the first instruction so moved with the following modification thereof, to wit: that "the said decree of confirmation made the title good and perfect in the said James Lawson, the petitioner, from the time of the date of such sale for taxes, the decree relating back to the date of such sale."

And also gave each of the second and third instructions so moved by the said defendants, with the following modification, to them and each of them, to wit:

"That the said five years' statute of limitations could only begin to run from the time actual possession of the land was taken under such tax sale, or from the date of the recording of the deed from the said Borden to the said Lawson, so read in evidence, on the part of the defendants."

And to which judgments and decisions of the court in so giving to the jury said first, second, and third instructions so moved by the defendants, and so modified by the court, and each of them, the said plaintiff excepted at the time, and such exception was then noted by the court, and further time given to reduce the same to form at any time during the same term, which is now done.

And now, in pursuance of such leave, the said plaintiff now, on this first day of May in the same term, comes and tenders this her bill of exceptions, in respect to the several judgments and decisions so excepted to, and prays that the same may be signed, sealed, enrolled, and made a part of the record in this cause, which is accordingly done now for them.

DANIEL RINGO, [SEAL.]
U. S. Judge, &c.

Filed 1st May, 1857.

WM. FIELD, *Clerk.*
By R. SEARCY, *D. C.*

In the Circuit Court of the United States for the eastern district of Arkansas—April term, A. D. 1857.

MARY ANN THOMAS, Plaintiff,
versus
HIRAM A. LAWSON, ELIZA LAWSON, Arkansas Lawson, James Lawson, Henry Lawson, and Mary Lawson, heirs-at-law of James Lawson, deceased, by their guardian ad litem, George A. Gallagher, Defendants. } Ejectment. Scire facias.

And the said plaintiff, with the intent to carry this cause to the Supreme Court of the United States by writ of error, comes and says, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error, in the following particulars, to wit:

First. That the said circuit court erred in admitting in evidence to the jury the said paper-writing purporting to be a deed from Wm. B. Borden, as collector, to James Lawson, the original defendant.

Secondly. The said circuit court erred in admitting as evidence to the jury the said paper-writing purporting to be a decree of the chancery court of Pulaski county, on the part of said defendants.

Thirdly. The said circuit court erred in refusing to give to the jury the said second, third, fourth, fifth and seventh instructions so moved by the said plaintiff, and each of them, as above set forth.

Fourthly. That the said circuit court in giving to the jury the five other instructions mentioned in the said bill of exceptions, and each of them, to wit, the two instructions given without being moved thereto, and the three modified instructions moved on the part of the said defendants.

And lastly, that the said circuit court rendered judgment in favor of the said defendants, and against the said plaintiff, whereas by the law of the land the said judgment ought to have been rendered in favor of the said plaintiff and against the said defendants.

Wherefore, for the errors aforesaid, and other errors in the record and proceedings aforesaid, the said plaintiff prays that the judgment aforesaid, in form aforesaid given, may be reversed, annulled, and altogether held for naught; and that she may be restored to all things which she has lost by occasion of the said judgment, &c.

FOWLER & STILLWELL,
Att's for Plaintiff.

Filed 1st May, 1857.

WM. FIELD, *Clerk.*
By R. SEARCY, *D. C.*

THE UNITED STATES OF AMERICA,
Eastern District of Arkansas, sct.

I, William Field, clerk of the circuit court of the United States, in and for the eastern district of Arkansas, do hereby certify that the fore-

going forty-seven pages and parts of pages contain a full and complete transcript of the record, proceedings, and papers on file in the case of Mary Ann Thomas, against Eliza Lawson, Hiram A. Lawson, Arkansas Lawson, Henry Lawson, James Lawson and Mary Lawson, now on record in my office.

In testimony whereof, I have hereunto set my hand as such clerk and affixed the seal of said circuit court, this 4th day of May, A. D. 1857.

[SEAL.]

Attest: WM. FIELD, *Clerk.*

Citation.

THE UNITED STATES OF AMERICA, *ss.*

The President of the United States to Eliza Lawson, Hiram A. Lawson, Arkansas Lawson, James Lawson, Henry Lawson and Mary Lawson, minors and heirs-at-law of James Lawson, deceased, or George A. Gallagher, esquire, their guardian ad litem, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington city, on the first Monday of December next, A. D. 1857, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Arkansas, wherein Mary Ann Thomas is the plaintiff in error, and you are the defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this first day of May, in the year of our Lord one thousand eight hundred and fifty-seven.

DANIEL RINGO,
U. S. Judge for the Eastern district of Arkansas.

I acknowledge full and legal service of the within citation, May 1st, A. D. 1857.

GEO. A. GALLAGHER,
As Guardian ad litem of Eliza A. Lawson, Hiram A. Lawson, Arkansas Lawson, James Lawson, Henry Lawson and Mary Lawson.

Filed 1st May, 1857. WM. FIELD, *Clerk.*
By R. SEARCY, *D. C.*

Writ of Error.

THE UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Honorable Judges of the Circuit Court of the United States for the eastern district of Arkansas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, in a certain action of ejectment which is in the